Remarks

The Examiner argues that each of the following groups of claims comprise separate and distinct inventions and restricts the application to one of the following groups of claims:

I. Claims 1-11, 20-32, 44-51, 52 and 52 (sic);

II. Claims 1, 12-19 and 43;

III. Claims 1, 33-41 and 53-56;

IV. Claims 57, 58 and 60.

With respect to Group I, the Applicant understands the Group consists of Claims 1-11, 20-32, 44-51 and 52. The Applicant understands the second reference Claim 52 is an oversight rather than a typographical error. If the Applicant's understanding is incorrect, the Applicant requests that the Examiner advise him of the correct claim number that was intended to be included as the last claim in Group I.

The Applicant traverses the election requirement as to Groups I through III. These claims have been amended and all depend directly or indirectly from Claim 1. The claims of Groups II and III are dependent (related) and are not distinct from the claims of Group I. MPEP § 802.01.

Claim 1 is directed to a process for developing real estate which comprises the steps of: (1) separating private easements for the provision of common services in a developed community from dedicated public rights-of-way; (2) establishing one or more decision making authorities/access entities to control said private easements as privately owned entities and to identify and contract with various service providers; (3) precluding access to said private easements by individual lot owners in said developed

community and governmental franchisees for providing said common services; (4) providing said common services to said developed community through said one or more decision making authorities/access entities, and (5) said one or more decision making authorities/access entities obtaining common services from one or more common services providers, respectively.

Claim 2 makes more specific the separating step (step 1) and transfers said exclusive rights to said decision making authority access entity. Claims 3 and 4 render more specific said exclusive rights. Claim 5 separates said developer entity and said decision making authority/access entity. Claims 6 and 7 makes more specific said exclusive rights transferred by said developer entity to said decision making authority/access entity. Claim 8 makes more specific said separating step as claimed in Claims 1 and 2. Claims 9 and 10 make more specific said common services. Claim 11 makes more specific the way each step is performed.

Claim 12 of Group II renders more specific the manner by which the owner of said private common services easements (said developer and/or said authority/access entities) provide said common services to said developed community. Claim 13 makes more specific the owner of said private common services easements. Claim 14 renders more specific said separating step (step 1). Claims 15 and 16 make more specific said common services. Claim 17 makes more specific said competitive shield in the event that said fee structures equaled or bettered by another common services provider. Claim 18 renders more specific said competitive shield when said common services comprises advanced bundled telecommunication services. Claim 19 renders more

specific said licenses to individual providers of services included in said common services. Claim 43 renders more specific the service of said common services.

Claim 33 renders more specific the separating step (step 1).

Claim 33 is the same as Claim 2 except that it is specific to a "developer" in requiring said decision making authority/access entity to be a privately owned company. Claim 34 requires the privately owned company to construct utility conduits and to license service providers to provide common services and to use said conduits. Claims 35 and 36 are specific as to the common services provided. Claims 37 and 38 are specific as to the fee charged. Claim 39 is specific as to the duties of the privately owned company. Claim 40 is specific as to the duties of said developer. Claim 41 is specific as to the management by said privately owned company. Claim 53 is specific as to said transferring step. Claim 54 is specific as to said dedicating step. Claim 55 is specific as to said transferring step as it relates to the exclusive rights in and to said common areas. Claim 56 is specific to the transfer of said exclusive rights.

The claims of Groups II and III do not have utility by themselves or in other combinations; they are each non-distinct from the claims of Group I. Each of the claims of Groups I, II and III – as amended – are not patentable over the claims of any other Group. MPEP § 806.05(c). Where the inventions are dependent (related) as disclosed, but are not distinct as claimed, restriction is never proper. MPEP § 806(c). A single search is required for Groups I, II and III. The processes claimed by the claims of Groups I, II and III are not distinct and have not acquired a separate status in the art and have no recognized divergent subject matter. The claims of Groups I, II and III are

neither independent nor distinct. Thus, the Examiner's restriction between the claims of Groups I, II and III is improper and should be withdrawn.

Applicant respectfully requests reconsideration of this election requirement. Notwithstanding the foregoing, the Applicant elects the claims of Group I – Claims 1-11, 20-32, 44-51, 52 (sic) —to be examined according to 35 U.S.C. § 121 and 37 C.F.R. § 1.143. Claims 42, 59, 61-64, and 65-70 depend directly or indirectly from Claim 1 and are included in Group I.

Applicant will file a divisional application drawn to a recordable real estate plat containing Claims 57, 58 and 60.

The Examiner also requires the Applicant to elect a species of his inventions to which prosecution on the merits should be restricted if no generic claim is found to be allowable. The Examiner has admitted that Claim 1 is generic. The Examiner requests an election of one of the following species:

1. Claims 1 and 65
2. Claims 1 and 66
3. Claims 1 and 68
4. Claims 1 and 69
5. Claims 1 and 70

for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable and to list all claims readable thereon, including any claims subsequently added.

The restriction between species is proper only if the species are independent or distinct. This is different form the restriction between inventions which is proper only if

the inventors are both independent and distinct. The terms "independent" and "distinct" in 37 CFR § 1.146 are defined in the same manner as they are defined in 37 CFR § 1.142 see MPEP § 802.01. The species defined by Claims 1 and 65, Claims 1 and 66, Claims 1 and 68, Claims 1 and 69, and Claims 1 and 70 are not independent; they are dependent and related. Each precludes government franchisees from providing common services and dedicates public rights away to a municipality as admitted by the Examiner. The species cannot be independent.

The species are also not distinct. The only difference between the species of Claims 1 and 65, Claims 1 and 66, Claims 1 and 68 and Claims 1 and 69 are that the species of Claims 1 and 65 gives the right to the decision making authorities to establish infrastructure for their own use or for the use of other providers of common services.

The species of Claims 1 and 66 gives the right to contract with providers of common services (outsourcing) in addition to providing their own service, but does not require the decision making authorities to establish infrastructure or common services.

The species of Claims 1 and 68 does not require the decision making authorities to provide infrastructure for common services or to outsource the common services and limits the common services to the selection from the group consisting of cable services, internet services, intranet services, local telephone services, long distance telephone services, video on demand services and security monitoring services.

The species of Claims 1 and 69 does not require the decision making authorities to be privately held companies and limits the common services to deregulated utility services. The species of Claims 1 and 70 do not require the decision making authorities

to be privately held companies and requires a system of interrelated contractual requirements which each of the other species include by reference to the specification.

None of these species is independent or distinct. None of these species has utility by themselves. None of these species is patentable over the other species. None of these species is mutually exclusive of each other. Because of these reasons, the requirement to elect a species should be withdrawn.

Applicant respectfully requests reconsideration of this election of species requirement. Notwithstanding the foregoing, the Applicant elects the species of Claims 1 and 70 under 35 U.S.C. § 121 for prosecution on the merits if no generic claim is finally held to be allowable. Applicant respectfully submits that the following claims are readable on the species of Claims 1 and 70:

For all of the reasons above given, Applicant respectfully requests the reconsideration of both the restriction between the claims of Groups I, II, III and IV under 37 CFR § 1.142 and the requirement for the election of species under 37 CFR § 1.142 and 35 USC § 121. Applicant respectfully submits that the restriction between the claims of Groups I, II and III and the election of species should both be withdrawn. Applicant currently plans to file a divisional application including the claims of Group IV.

Respectfully submitted,

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